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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,317	03/18/2004	Kenneth Browne Kixmoeller	022-040000US	7306

33486 7590 06/15/2006
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EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/804,317	KIXMOELLER, KENNETH BROWNE	
	Examiner	Art Unit	
	Gwendolyn Baxter	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
 4a) Of the above claim(s) 12-16 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,17-23 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 3, 7-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/04</u> . | 6) <input type="checkbox"/> Other: ____. |

This is the first Office action for application serial no. 10/804,317, Holding Device for a Cooking Container Lid, filed March 18, 2004.

Election/Restrictions

Applicant's election without traverse of Species 1, claims 1-11, 17-23 and 25-27 in the reply filed on March 29, 2006 is acknowledged. Claims 12-16, and 24 are withdrawn from consideration.

Information Disclosure Statement

The information disclosure statement filed June 14, 2004 has been placed in the application file, and the information referred to therein has been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the preamble recites an intended use "for holding a lid"; however, at line 8+ recites a positive limitation of "the lid is retained between the at least one retaining member and the second retaining member". Consequently, it is not clear

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whether applicant intends to claim the combination of the device with the lid. Please clarify. For the purpose of this office action the subcombination is being considered.

In claim 4, line 1, "the space" lacks proper antecedent basis.

In claim 5, line 3, "right wing" should read –right wing section- to make the language consistent with the cited language therein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 18-19, 23, 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,884,370 to Swanson. The present invention reads on Swanson as follows: Swanson teaches a device a mounting base (1) and a sliding member (8). The mounting base has at least one retaining member (4,5). The sliding member is operably connected with the mounting base. The sliding member further comprises a second retaining member (10); wherein the sliding member travels linearly with respect to the mounting base. The at least one retaining member is oriented in a direction generally opposed to the second retaining member. The article (2) is retained between the at least one retaining member and the second retaining member.

Regarding claims 2, 6, 18-19, 23, 25 and 27, Swanson teaches a device for holding an article (2) comprising a mounting base (1) and elongate sliding member (8). The mounting base has a center section (9a including the interior portion bordered by 7, 13), wherein the center section defines a slot (the opening receiving the screw 9). A left wing or first lateral section (the portion containing 4 and 7 on the left side of the device) is connected with the center section, wherein the left wing section further comprises a first retainer clip (5). A right wing or second lateral section (the portion containing 4 and 7 on the right side of the device) connected with the center section, wherein the right wing section further comprises a second retainer clip (5). The elongate sliding member further comprises a third retainer clip (10). The sliding member both travels within and is retained within the slot. The left wing section and the right wing section are angled forward such that the first retainer clip, the second retainer clip, and the third retainer clip define a common plane parallel to the sliding member. The first retainer clip is oriented at a first angle with respect to an orientation of the third retainer clip and the second retainer clip is oriented at a second angle with respect to the orientation of the third retainer clip. The first angle is equal and opposite the second angle. The sliding member further comprises a retention member (14), and wherein the third retainer clip is disposed on a first end of the sliding member. The retention member is adapted to engage the mounting base to arrest the travel of the sliding member within the slot. The left wing section and the right wing section each define a mounting aperture or attachment means (3).

Claims 2, 17, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,364,537 to Helzer. Regarding claims 2 and 17, Helzer teaches a device for holding an article (100) comprising a mounting base (10) and elongate sliding member (56). The mounting base has a center section, wherein the center section (16, 18) defines a slot (defined between 12, 14, 16). A left wing (80) is connected with the center section, wherein the left wing section further comprises a first retainer clip (82). A right wing (80') connected with the center section, wherein the right wing section further comprises a second retainer clip (82'). The elongate sliding member further comprises a third retainer clip (56). The sliding member both travels within and is retained within the slot. The first, second and third retainer clip comprises a shelf and lip, respectively.

Regarding claims 25 and 26, the present invention reads on Helzer as follows: Helzer teaches a mounting component (10) and a sliding component (56). The mounting component has a first lateral section (30), a second lateral section (30), first retainer means (80, 82), second retainer means (80', 82'), a central section (16, 18), a third retainer means (56). The first retainer means extends from the first lateral section. The first retainer means is adapted to engage a rim of the article or lid. The second retainer means extends from the second lateral section. The second retainer means extends is adapted to engage a rim of the article or lid. The central section is disposed between and contiguous with the first lateral section and the second lateral section. The sliding component is functionally restrained by the central section to movement in two dimensions, wherein the sliding component further comprises the third retainer

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means adapted to engage the rim of the lid. The central section is spaced apart from both the first lateral section and the second lateral section. The central section is connected with the first lateral section along a first edge by a first transition step (28). The central section is connected with the second lateral section along a second edge by a second transition step (28). The sliding component moves within the space between the central section, the first lateral section, and the second lateral section. The sliding component is functionally restrained between the central section, the first transition step, and the second transition step.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson. Swanson teaches the limitations of the base claim, excluding the retention member being disposed on a second end of the sliding member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the retention member at the second end of the sliding member, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson in view of U.S. Patent No. 4,542,876 to Hogg. Swanson teaches the

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limitations of the base claim, excluding the device being composed of a metal or metal alloy, namely stainless steel. Hogg teaches a device for holding an article being form of stainless steel and/or plastic (see column 9, lines 19-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the material used by Swanson to have incorporated the material as taught by Hogg, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

Claims 3 and 7-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4 and 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harlow 4223864; Nascher 4473207; and Hughes 3176943 teach a device for holding an article therein.

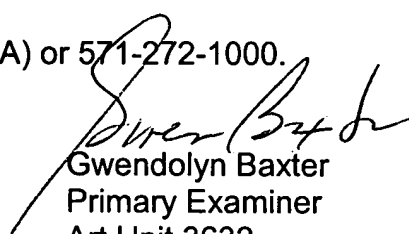
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-

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6814. The examiner can normally be reached on Monday-Wednesday, 8:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gwendolyn Baxter
Primary Examiner
Art Unit 3632

June 12, 2006